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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,563	03/15/2004	Anthony M. Iannelli	US-0204-I	9830
26904	7590	03/09/2005	EXAMINER	
WM. CATES RAMBO 508 MERCANTILE LIBRARY BLDG. 414 WALNUT STREET CINCINNATI, OH 45202-3913			CHAPMAN, JEANETTE E	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>V</i> Office Action Summary	Application No.	Applicant(s)
	10/800,563	IANNELLI, ANTHONY M.
	Examiner Chapman E Jeanette	Art Unit 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 March 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
 - 4a) Of the above claim(s) 15 and 18-21 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14, 16 and 21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input checked="" type="checkbox"/> Other: <u>COPY OF PATENT W/ANNOTATIONS</u> |

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DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Specie 1, figure(s) 1-3

Specie 2, figure(s) 4

Specie 3, figure(s) 5

Specie 4, figure(s) 6

Specie 5, figure(s) 7

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr Rambo on 3/3/05 a provisional election was made with traverse to prosecute the invention of Specie 1, claims 1-14, 16 and 22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15 and 18-21 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 21, 24, 25, 26 are rejected under 35 U.S.C. 102(b) as being anticipated

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 5-14, 16 and 22 (is/are) rejected under 35 U.S.C. 103(a) as being unpatentable over by Iannelli (5640809) in view of Kuhns (6161338). Iannelli discloses a cover section for a roof gutter. The cover section being fashioned to extend longitudinally in an overlying relation to a length of the gutter. The cover section comprises:

- A top portion extending forwardly from a rear edge of the cover section; see annotations on patent copy
- A front wall, adjacent ref. no.s 34/30, extending downwardly from the top portion
- A ledge 45 extending horizontally from the lower section of the front wall
- At least one longitudinally extending ridge 35 formed in the top portion
- The cover is integrally and unitarily formed from a single sheet of aluminum having a thickness between .022 and .026 inches which is within the recited range .016-.032 inches

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- The top portion is formed with an imperforate rear section, a midsection wherein the at least one longitudinally extending ridge and an imperforate front section
- The mid section is formed with a pair of relatively spaced apart , longitudinally extending ridges
- The lower section of the front wall includes a downwardly and rearwardly inclined splashguard 22; the splashguard is provides with a plurality of apertures; see last 5 lines of column 3 and all of column 4; the horizontal ledge is provided with a plurality of apertures or ports 33 see figure 2b
- The horizontal ledge is provided with a raised front lip 40
- The gutter lip mounting surface 41 extends generally rearwardly from a front portion of the horizontal ledge; see annotations on patent copy
- A space is provided between the horizontal ledge and the gutter lip mounting surface 26; see figure 2A

Measurements such as the vertical distance between the upper end of the front wall and the horizontal ledge and the size of the apertures has been considered a matter of procedural and routine design; one of ordinary skill in the art would have appreciated the proper distance and the proper size to make the apertures enabling the intended function of the cover.

Iannelli lack the apertures commonly known in gutters for drainage as shown by Kuhns. Kuhns shows the apertures 126/130 on the cover section to permit the drainage of water in the gutter. The location of the ridges has been considered a matter of choice; one of ordinary skill in the art would have appreciated placing the opening s in any

location that would permit the intended function of the cover section. Nevertheless, kuhns discloses a top portion is formed with an imperforate rear section 400/422, a midsection wherein at least one longitudinally extending ridge, adjacent ref no. 424 and 430, and the plurality of apertures 126/130,are disposed and an imperforate horizontal disposed front section. The apertures are disposed in front and behind the two ridges.

In view of the above it would have been obvious to one of ordinary skill in the art to include the apertures to aid in drainage of water into the gutter as shown by Kuhn. Claims 3-4 (is/are) rejected under 35 U.S.C. 103(a) as being unpatentable over the above prior art as applied to claim 1 and further in view of Albracht (5557891).

Iannelli discloses a top portion is provided with a clipped ear edge corner at at least one end of the hemmed rear edge. Albracht shows the above structure; see figures 12 and 13. It would have been obvious to one of ordinary skill in the art to modify Iannelli to include the clipped and hemmed edge

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jec

Jeanette Chapman
JEANETTE E. CHAPMAN
PRIMARY EXAMINER
GROUP ~~2000~~ 3600